

**THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION**

**IN RE:**

**HADSADONG LUANGXAY**

**Debtor**

**Case File No.: 08-5407-8-DMW**

**Chapter 7**

**DEBTOR'S AMENDED MOTION PURSUANT TO 11 U.S.C. § 522 (f)(1)**  
**(AVOIDANCE OF JUDGMENT LIEN OF JAIME R. KIRNOS)**

Now comes Hadsadong Luangxay ("Debtor"), by and through counsel, and moves to avoid the judicial lien of Creditor Jaime R. Kirnos, (hereinafter, "Kirkos") pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 of the Federal Rules of Bankruptcy Procedure by showing unto the court the following:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157, and 1334. The court has the authority to hear this matter pursuant to the General Order of Reference entered August 3, 1984 by the United States District Court for the Eastern District of North Carolina.

2. The Debtor filed a voluntary petition on August 11, 2008, seeking relief under Chapter 7 of the United States Bankruptcy Code. ("Petition Date").

3. At the time of the filing of the petition the Debtor was the owner of real property described as 3325 Ardley Court, Falls Church, VA 22014 ("Property") having a value of \$436,710.00.00, as of the Petition Date.

4. The Property was not the Debtor's primary residence, and the Debtor could claim an exemption in the amount of \$2,500.00 pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) (Wildcard Exemption) if there were no liens on the Property.

5. The Property was encumbered by a first priority deed of trust in favor of American Home Mortgage ("First Mortgage Creditor"). As of the Petition Date, the obligation owed to the First Mortgage Creditor was \$359,254.00.

6. The Property is encumbered by a second priority deed of trust in favor of E-Trade ("Second Mortgage Creditor"). As of the Petition Date, the obligation owed to the Second Mortgage Creditor was \$140,096.00.

7. That Jaime R. Kirnos, has a civil judgment in the amount of \$35,864.37, against the Debtor, in case number CL-2008-4720, entered on August 14, 2009, in the Circuit Court of Fairfax County, Virginia domesticated in Mecklenburg County, North Carolina.

8. Pursuant to 11 U.S.C. § 522(f)(2)(A), "a lien shall be considered to impair an exemption to the extent that the sum of (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property in the absence of any liens.

9. The total amount of the liens on the Property plus the amount of the exemption the Debtor could claim if there were no liens on the Property exceeds what the value the Debtor's interest in the Property would have in the absence of any liens; therefore, the judicial lien of Jaime R. Kirnos impairs an exemption pursuant to 11 U.S.C. § 522(f)(2)(A) and is subject to avoidance pursuant to 11 U.S.C. § 522(f)(1). The calculations are as follows:

1 <sup>st</sup> Mortgage Creditor	\$359,254.00
2 <sup>nd</sup> Mortgage Creditor	\$140,096.00

Jaime R. Kirnos	\$35,864.37
Exemption	\$2,500.00
Total Liens and Exemption	\$537,714.37
Less: Property Value	\$436,710.00
Amount of Impairment	\$101,004.37
Amount of Lien Avoided	\$35864.37

Wherefore, the Debtor prays for the court to grant the following relief:

1. To avoid and cancel the lien held by Jaime R. Kirnos, in the Circuit Court in case number CL-2008-4720, entered on August 14, 2009, in Fairfax County, Virginia domesticated in Mecklenburg County, North Carolina.
2. To enter an Order stating that the lien held by Jaime R. Kirnos shall have no further force and effect upon the Property;
3. To grant such other relief as the court deems just and appropriate.

**RESPECTFULLY SUBMITTED.**

This 27<sup>th</sup> day of April, 2018.

**The Lewis Law Firm, P.A.**

/s/Robert Lewis, Jr.  
ROBERT LEWIS, JR.  
Attorney for Debtor(s)  
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TO: ALL PARTIES IN INTEREST

NOTICE IS HEREBY GIVEN of the Motion Requesting Avoidance Of Lien herewith by Robert Lewis, Jr., attorney for the above-captioned case; and

FURTHER NOTICE IS HEREBY GIVEN that **pursuant to the attached hereto if you fail to respond or otherwise plead or request a hearing in writing within fourteen (14) days from the date of this Notice**, the relief requested in the Amended Motion may be granted without further hearing or Notice; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and request for hearing is filed by any party in writing within the time period indicated, a hearing will be conducted on the Amended Motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the Motion and Response thereto *ex parte* without further notice.

This 27<sup>th</sup> day of April, 2018.

**The Lewis Law Firm, P.A.**

/s/Robert Lewis, Jr.  
ROBERT LEWIS, JR.  
Attorney for Debtor(s)  
NC Bar # 35806  
555 Fayetteville Street  
Suite 201  
Raleigh, NC 27601  
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[rlewis@thelewislawfirm.com](mailto:rlewis@thelewislawfirm.com)

**CERTIFICATE OF SERVICE**

I, Robert Lewis, Jr., do hereby certify, under penalty of perjury, that I am of sufficient age to tender service; and that on this day I had served the attached **Amended Motion to Avoid Judicial Lien and Notice of Motion**, by either certified mail, regular mail and/or electronic mail, upon the parties set forth below:

John C. Bircher III (sent via electronic filing)  
Chapter 7 Trustee

Marjorie K. Lynch (sent via electronic filing)  
Bankruptcy Administrator

Jaime R. Kirnos (sent via U.S. Mail)  
12913 Centre Park Circle #109  
Herndon, VA 20171

Tate, Bywater & Fuller, PLC (sent via U.S. Mail)  
2740 Chain Bridge Road  
Vienna, VA 22181  
Attorney for Jaime R. Kirnos

Hadsadong Luangxay (sent U.S. Mail)  
7547 Starvalley Drive  
Charlotte, NC 28210

This 27<sup>th</sup> day of April, 2018.

**THE LEWIS LAW FIRM, P.A.**

/s/Robert Lewis, Jr. \_\_\_\_\_  
ROBERT LEWIS, JR.  
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